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2011 JAN -6 AM 11:47

OFFICE OF GENERAL  
COUNSEL

January 5, 2011

**VIA FEDERAL EXPRESS**

Jeff Jordan, Supervisory Attorney  
Complaints Examination & Legal Administration  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: MUR #6431  
Complaint Against N.H. Republican Senate Majority Committee

Dear Mr. Jordan:

Enclosed please find an Answer being filed on behalf of the New Hampshire Republican Senate Majority Committee.

Thank you for your assistance.

Very truly yours,

  
Bryan K. Gould, Esq.

BKG:bmb

Enclosure

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FEDERAL ELECTION  
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BEFORE THE  
FEDERAL ELECTION COMMISSION

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Re: N.H. Republican Senate Majority Committee

OFFICE OF GENERAL  
COUNSEL

MUR #6431

**ANSWER OF THE REPUBLICAN SENATE MAJORITY COMMITTEE**

The New Hampshire Republican Senate Majority Committee (the "Committee") submits the following answer to the complaint filed by Raymond Buckley with the Commission on November 15, 2010.

**Introduction**

The Buckley complaint is predicated upon the faulty assertion that the advertisements about which it complains expressly advocated for the election of Kelly Ayotte to the United States Senate. In fact, the advertisements consist entirely of Ms. Ayotte's endorsement of candidates for the New Hampshire state senate. As a result, there is no violation of federal law and the Commission has no jurisdiction to take action against the Committee.

**Statement of Facts<sup>1</sup>**

In December of 2008, the Committee registered with the New Hampshire secretary of state as a political committee under state law. The objective of the Committee was to achieve the election of a Republican majority to the New Hampshire Senate in 2010.

The chairman of the Committee is Peter Bragdon, a state senator. In the 2009-2010 biennium, Sen. Bragdon served as the minority leader in the New Hampshire Senate. In the

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<sup>1</sup> The statement of facts is supported by the accompanying affidavits of Peter Bragdon and Michael P. Dennehy.

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November 2010 general election, Republicans gained a majority in the New Hampshire Senate, and in December of 2010 Sen. Bragdon was elected president of the senate by the newly inaugurated majority. The complainant, Raymond Buckley, is the chairman of the New Hampshire Democratic State Committee.

In the fall of 2010, the Committee retained veteran New Hampshire political consultant Michael Dennehy to formulate a strategy to elect a Republican majority to the state senate. As a part of his work for the Committee, Mr. Dennehy monitored the polling data for the United States Senate race between former state attorney general Kelly Ayotte and congressman Paul Hodes. Mr. Dennehy saw the race as a bellwether of the outlook of the state's electorate. Neither Mr. Dennehy nor his company played any part in the Ayotte campaign.

In October of 2010, Ms. Ayotte opened up a lead of fifteen points or better in the polls, and Mr. Dennehy concluded that undecideds were beginning to break for her. Mr. Dennehy thought that because Ms. Ayotte held such a commanding lead over Mr. Hodes, she might be willing to try to help down-ticket Republican candidates. Mr. Dennehy believed that Ms. Ayotte could have a substantial "coattail" effect for such candidates, so he recommended to the Committee that it run advertisements in which Ms. Ayotte would endorse local state senate candidates. The Committee approved his recommendation.

Mr. Dennehy then contacted one of Ms. Ayotte's campaign consultants and asked whether she would be willing to endorse certain state senate candidates. The consultant later told Mr. Dennehy that the Committee could proceed with the endorsement advertisements for those candidates.

Mr. Dennehy worked with a political advertising consultant on the endorsement advertisements. No one associated with the Ayotte campaign proposed any of the content or

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layout of the advertisements. Mr. Dennehy did provide an exemplar of the advertisements to Ms. Ayotte's campaign consultant, and he told Mr. Dennehy that the advertisements were "fine." No one from the Ayotte campaign proposed any modification of the advertisements.

The advertisements, examples of which are attached to the Buckley complaint, associate Ms. Ayotte's name and photograph with the names and photographs of the local state senate candidates. They also contain a quote attributed to Ms. Ayotte that says:

New Hampshire is at a crossroads. The only way we will fix our problems is with common sense solutions, not more government spending and higher taxes. I hope you'll join me in supporting [candidate's name] for State Senate.

The quote is followed by the exhortation, "Please Vote This Tuesday!"

The advertisements do not advocate the election of Ms. Ayotte. Indeed, it is beyond the Committee's objectives to support or oppose candidates for federal office. The purpose of the advertisements was to associate the names of state senate candidates with Ms. Ayotte's and to convey her endorsement of those candidates. That is precisely what they did.

#### Argument

The Buckley complaint rests entirely on the premise that the Committee's advertisements "expressly advocate[d] for the election of Kelly Ayotte, a clearly identified federal candidate." Buckley Complaint at 2. To create this premise, however, the complainant must take these elements of the advertisements out of their context.

According to the complaint, the advertisements expressly advocate for Ms. Ayotte's election because they "prominently display Ayotte's name and photograph, and ask readers to 'Please Vote This Tuesday!' " *Id.* While each of these elements does appear in the advertisements, the import of an advertisement must be determined by considering all of its

elements as a whole, not by cobbling together a select few. Otherwise, the intent and meaning of the advertisement may be misconstrued altogether. For example, an advertisement that prominently displayed Kelly Ayotte's name and photograph and urged readers to vote would take on a very different meaning if it also included the sentence, "Don't let her take away your right to healthcare."

In this case, ignoring the quote attributed to Ms. Ayotte substantially changes the import of the Committee's advertisements. It is in the quote that the reader learns that Ms. Ayotte is advocating for the election of state senate candidates. By contrast, nowhere do the advertisements advocate for Ms. Ayotte's election.

Taken as a whole, then, the Committee's advertisements are plainly endorsements of state senate candidates. To constitute "Federal election activity" a "public communication" must not only "refer[ ] to a clearly identified candidate for Federal office," it must also "promote[ ] or support[ ] a candidate for that office . . . ." 2 U.S.C. §431(20)(A)(iii). For the Committee to be subject to the Commission's jurisdiction, moreover, it must have made "expenditures" of more than \$1,000 per year. 2 U.S.C. §431(4)(A). An "expenditure," in turn, is defined as some form of value given "for the purpose of influencing any election for Federal office." 2 U.S.C. §431(9)(A)(i). Because the Committee's advertisements did not have the purpose of influencing the Ayotte-Hodes race and did not promote or support Ms. Ayotte's candidacy, the Committee did not engage in "Federal election activity" and it is not a "political committee" within the meaning of federal law. As a consequence, the Buckley complaint presents no reason to believe that there has been a possible violation of the Federal Election Campaign Act of 1971, as amended.

Respectfully submitted,

THE NEW HAMPSHIRE REPUBLICAN  
SENATE MAJORITY COMMITTEE

By Its Attorneys,

Brown, Olson & Gould, P.C.

Date: 1-5-11

By: Bryan K. Gould

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